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MINUTES OF THE 232ND MEETING OF THE
WATER MANAGEMENT BOARD
REMOTE MEETING VIA AUDIO/VISUAL CONFERENCE
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA

July 7, 2021

CALL TO ORDER: Chairman Jim Hutmacher called the meeting to order at 9:30 a.m. Central Time. The roll was called, and a quorum was present.

Chairman Hutmacher announced that the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

The following were present either remotely or in person:

Board Members: Jim Hutmacher, Leo Holzbauer, Peggy Dixon, Rodney Freeman, and Tim Bjork. Chad Comes and Bill Larson were absent.

Department of Agriculture and Natural Resources (DANR): Eric Gronlund, Chief Engineer, Ron Duvall, John Farmer, and Adam Mathiowetz.

Attorney General's Office: David McVey, board counsel; Ann Mines Bailey, Water Rights Program counsel.

Legislative Oversight Committee: Senator Mary Duvall, Pierre, and Representative Mike Weisgram, Ft. Pierre.

Court Reporter: Carla Bachand, Capital Reporting Services.

Deferred Water Permit Application No. 8433-3, City of Lake Norden: Gregg Jorgenson, Brookings; Jason Aho, Lake Norden; and Todd D. Boyd, Clear Lake.

Consider rescission of suspension of Water Right Nos. 4678-3 and 6960-3, Craig Jepsen, Hutchinson, MN: Gary Jepsen.

ANNUAL ELECTION OF OFFICERS: Mr. Freeman nominated Tim Bjork as chairman, Bill Larson as vice chairman, and Leo Holzbauer as secretary.

There were no other nominations.

Motion by Dixon, seconded by Freeman, to approve the slate of officers nominated by Mr. Freeman. A roll call vote was taken, and the motion carried unanimously.

ADOPT FINAL AGENDA: Chairman Bjork requested approval of the final agenda.

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Motion by Dixon, seconded by Hutmacher, to adopt the final agenda. A roll call vote was taken, and the motion carried unanimously.

CONFLICT DISCLOSURES AND REQUESTS FOR STATE BOARD WAIVERS: None.

ADOPT MAY 5, 2021, BOARD MINUTES: Motion by Freeman, seconded by Dixon, to approve the minutes of the May 5, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

ADOPT MAY 19, 2021, BOARD MINUTES: Motion by Freeman, seconded by Hutmacher, to approve the minutes of the May 19, 2021, Water Management Board meeting. A roll call vote was taken, and the motion carried unanimously.

OCTOBER 6-7, 2021 MEETING AND LOCATION: Ron Duvall stated that, based on Hearing Officer Freeman's Order, the board is scheduled to consider motions and responses to motions in the matter of Water Permit Application Nos. 2685-2 and 2686-2, and the 2012 Groundwater Discharge Plan Application submitted by Powertech (USA) Inc. at the October meeting

Hearing Officer Freeman stated that he is expecting multiple requests to hold the October meeting in Rapid City. He asked for guidance from the board and the DANR.

Mr. Duvall said he has been receiving a lot of emails from people, several of whom are not parties. He requested guidance from the board as to what he should do with these emails. Several of the parties that submitted emails requested that the board meet in Rapid City.

Mr. Duvall stated that Room 413 and 414 in the Capitol Building are available on October 6-7. He said if the board decides to meet in Rapid City, technology will most likely be an issue, in terms of any of the board members wishing to participate remotely. Another issue for the board to consider is security. The State Capitol Building has security, but there is no security at a third-party site such as a motel meeting room.

Chairman Bjork asked if it is possible to hold the meeting at City Hall or the County Courthouse. Mr. Duvall responded that he would have to check on availability of a meeting room at either of those places.

Mr. Hutmacher suggested the board meet in the State Capitol in October.

Mr. Freeman agreed, stating that this is a motions hearing, not the actual hearing on the permit applications.

Ms. Dixon agreed that the October meeting should be in Pierre. She also suggested checking into holding the hearing at the School of Mines because the technology is available there.

Chairman Bjork asked if there is a way to pass along the understanding that in October the board will consider motions; it is not the actual permit application hearing.

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Mr. Duvall stated that Hearing Officer Freeman's Order was clear that in October the board will consider motions regarding re-starting the hearing.

Chairman Bjork requested a motion to hold the October 6-7 meeting at the State Capitol in Pierre.

Motion by Hutmacher, seconded by Holzbauer, to hold the October 6-7, 2021, Water Management Board meeting at the State Capitol in Pierre. A roll call vote was taken, and the motion carried unanimously.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: None.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: None.

ADMINISTER OATH TO DANR STAFF: The court reporter administered the oath to DANR staff who intended to testify.

CONSIDER FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 2814-2, JUDE WILDEMAN/BIG MOUNTAIN CABINS: David McVey, board counsel, stated that Water Permit Application No. 2814-2 came before the board on May 5, 2021. The board, having considered the testimony, exhibits presented, all records and documents filed and having entered an oral decision, directed preparation of Findings of Fact, Conclusions of Law, and Final Decision.

Ann Mines Bailey, on behalf of the Water Rights Program, filed the proposed Findings of Fact, Conclusions of Law, and Final Decision.

The intervenor, Lon Buehner submitted an objection and suggested revisions to Findings of Fact Paragraph 19 (now Paragraph 23) and requested the Findings of Fact Paragraph 5 be deleted in its entirety.

Mr. McVey stated that the intervenor's request to amend Finding of Fact Paragraph 19 (now Paragraph 23) and to delete Finding of Fact Paragraph 5 in its entirety should both be denied.

The Final Decision determines that Water Permit Application No. 2814-2 is granted with the following qualifications:

1. The well approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The permit holder shall report to the Chief Engineer annually the amount of water withdrawn from the Crystalline Rock aquifer.
3. Water Permit No. 2814-2 authorizes a total annual diversion of less than 2.0 acre-feet of water.

Mr. McVey noted that the signature block will be changed from "Jim Hutmacher, Chairman" to "Tim Bjork, Chairman."

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Motion by Freeman, seconded by Dixon to reject the two proposed amendments submitted by Mr. Buehner, and accept the change to the signature block, and to adopt the final Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 2814-2, Jude Wildeman/Big Mountain Cabins. A roll call vote was taken, and the motion carried unanimously.

DEFERRED WATER PERMIT APPLICATION NO. 8433-3, CITY OF LAKE NORDEN: Ann Mines Bailey stated that this matter was before the board in October of 2020 at which time the Chief Engineer recommended deferral for a study of the aquifer. The city of Lake Norden subsequently acquired a consultant who worked in conjunction with Adam Mathiowetz, DANR, to perform aquifer testing and received the information that was necessary for this application. The city of Lake Norden also decreased the amount of the appropriation requested.

The Chief Engineer has changed his recommendation from deferral to approval.

Ms. Mines Bailey stated that when this matter came before the board initially it was public noticed and there were no intervenors so this is not a contested case. She said because the Chief Engineer had previously recommended deferral and is now recommending approval of the application, the Water Rights Program wanted to bring it before the board.

Ms. Mines Bailey asked Chairman Bjork if he would like Mr. Mathiowetz to provide narrative testimony. Chairman Bjork asked that Mr. Mathiowetz be available for questions.

Ms. Mines Bailey noted that representatives of the city of Lake Norden were present.

Chairman Bjork asked the board if they had any questions of Mr. Mathiowetz or the city of Lake Norden representatives.

There being no questions, Chairman Bjork requested a motion from the board.

Motion by Hutmacher, seconded by Freeman, to approve Water Permit Application No. 8433-3, city of Lake Norden with the qualifications set forth by the chief engineer. A roll call vote was taken, and the motion carried unanimously.

DEFERRED WATER PERMIT APPLICATION NO. 7610-3, BRET FLIEHS: Ron Duvall reported that this application was submitted in January 2013. The application was for 18 shallow wells to irrigate 360 acres in Brown County, which were also permitted for irrigation under a different permit. At the time, the Chief Engineer made a recommendation to defer the application in order to complete an aquifer pump test to determine whether water was available and to determine any potential impacts on other users in that aquifer.

At the May 2013 meeting, the board deferred action to await completion of that pump test. Mr. Duvall noted that the pump test has not occurred.

In 2021, Mr. Fliehs submitted another application, which has now been processed and approved. After the new application was submitted, staff contacted Mr. Fliehs to see what his intentions were

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regarding this deferred application. Mr. Fliehs responded that he was not going to pursue completion of the pump test, and he asked to withdraw the application. Since the application was previously presented to the board and action was taken by the board to defer it, notice was sent to Mr. Fliehs informing him that the board would consider denial of the permit, and the Chief Engineer reissued a recommendation changing it from deferral to denial. Mr. Duvall noted that the benefit to Mr. Fliehs in getting this settled is he gets the licensing fee and 75 percent of the application fee refunded.

Motion by Freeman, seconded by Dixon, to deny Water Permit Application No. 7610-3, Bret Fliehs. A roll call vote was taken, and the motion carried unanimously.

WATER PERMIT APPLICATION NO. 8450-3, TOM NUHSBAUMER: Water Permit Application No. 8450-3 proposes to appropriate water at a maximum instantaneous diversion rate of 1.78 cubic feet per second (cfs) for the irrigation of 101.4 acres. The proposed diversion points are four wells to be completed into the Pleistocene Series: Unknown aquifer with well depths less than 60 feet. The location of the proposed wells and the proposed acres is in northeast corner of Hand County approximately 6.5 miles south of Rockham. This application is requesting a diversion rate that exceeds the statutory limit of 1 cfs per 70 acres.

Mr. Gronlund stated that the report was written by John Farmer. The application was reviewed, and a recommendation of approval was made and published for board hearing. In response to that public notice, no petitions to intervene were filed.

The application was scheduled for board hearing under SDCL 46-1-16, which provides the Chief Engineer the option to schedule an application for hearing, even if uncontested, if it is found that the application presents important issues that should be heard by the board.

Mr. Gronlund stated that the issue at hand in this case is the well location is within the boundary of what was previously identified as the Tulare:Western Spink Hitchcock Aquifer, which is a fully appropriated aquifer, and there are applications placed on hold in the event of if or when water becomes available. This well is in what was previously a small finger of the Tulare:Western Spink Hitchcock Aquifer.

Mr. Gronlund stated that Mr. Farmer did a deep dive of the complex geology of this area and determined that this is not the Tulare:Western Spink Hitchcock Aquifer, but instead it is best identified as the Pleistocene Series: Unknown Aquifer. That finding was vetted through the South Dakota Geological Survey, who concurred with Mr. Farmer's determination. Mr. Gronlund stated that since this was an area previously identified as a finger of the Tulare:Western Spink/Hitchcock Aquifer, he felt it necessary to bring the application before the board for consideration. Mr. Farmer's report discusses two other existing water rights within this area that were previously identified as Hand Management Unit of the Tulare Aquifer. That aquifer is not fully appropriated, but Mr. Gronlund said he wanted it to be on record that those are now identified as being in the Pleistocene Series: Unknown Aquifer, based on Mr. Farmer's review. Moving forward, DANR will manage that accordingly.

Mr. Gronlund noted that Mr. Farmer was prepared to provide a brief narrative on the application if the board desired, and he and Mr. Farmer were available to answer questions.

Chairman Bjork asked if any of the board members had questions. There were no board questions.

Motion by Freeman, seconded by Hutmacher, to approve Water Permit Application No. 8450-3, Tom Nuhsbaumer subject to the qualifications set forth by the Chief Engineer. A roll call vote was taken, and the motion carried unanimously.

Chairman Bjork acknowledged that Senator Duvall and Representative Weisgram were present at the meeting.

CANCELLATION CONSIDERATIONS: Mr. Duvall stated that prior to the meeting, the board members received the board packet, which included a table listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.

Thirteen water rights/permits were scheduled for cancellation. The owners were notified of the hearing and the reasons for cancellation. The department received no comments or letters in response to the notices of cancellation.

None of the right/permit holders were present at the meeting.

The following water rights/permits were recommended for cancellation for the reasons listed in the table below.

Number	Original Owner	Present Owner(s) & Other Persons Notified	Reason
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DIVISION I WATER PERMIT

PE 1954-1	Katmandu Enterprises LLC	Same (% Mike Russell)	Non-construction
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DIVISION II WATER PERMITS

PE 2632-2	City of Box Elder	Same (% Bob Kaufman)	Non-construction
PE 2646-2	Fred Rittberger & Sons Inc	same	Non-Construction
PE 2745-2	Croell Redi Mix	Same (% Kyle Frisinger)	Abandonment

DIVISION III WATER PERMITS AND WATER RIGHT

RT 164-3	Debra L Hansen	Debra L Hansen, Alan Flyger	Abandonment/Forfeiture
PE 6853-3	Pine Knoll Inc.	Same (% Don Boyd)	Non-Construction
PE 6853A-3	Pine Knoll Inc.	Same (% Don Boyd)	Non-Construction
PE 7016-3	Richard Kor	Same	Abandonment
PE 7420-3	Rick Even	Same	Non-Construction
PE 7536-3	Eugene Kleinjan	Same	Non-Construction
PE 7672-3	Mayfield Hutterian Brethren	Same (% Joe Waldner)	Non-Construction
PE 7673-3	Mayfield Hutterian Brethren	Same (% Joe Waldner)	Non-Construction
PE 7992-3	Porter Farm Inc.	Same (% Mark Porter)	Non-Construction

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Motion by Freeman, seconded by Dixon, to accept the chief engineer's recommendations for cancellation of the thirteen water rights/permits for the reasons listed. A roll call vote was taken, and the motion carried unanimously.

FUTURE USE REVIEWS: A table listing the two future use permits up for a seven-year review was included in the board packet that the board members received prior to the meeting. Mr. Duvall reported that certain entities such as water distribution systems, municipalities and rural water systems can reserve water for future needs.

State law requires future use permits to be reviewed by the Water Management Board every seven years, and it requires the permit holder to demonstrate a reasonable need for the future use permit.

The board packet also included a letter from the entity requesting that they be allowed to retain their future use permits, the Chief Engineer's recommendations, and the Affidavits of Publication showing that today's hearing was public noticed. No letters in opposition were received in response to the public notice.

The chief engineer recommended that the board allow the two Future Use Permits to remain in effect as listed below.

No.	Name	Amount Remaining in Reserve	Source
5689-3	Big Sioux Community Rural Water System	360 AF	Big Sioux:Northern Skunk Creek
6834-3	Big Sioux Community Rural Water System	600 AF	Big Sioux:Northern Skunk Creek

Motion by Hutmacher, seconded by Holzbauer, that the two future use permits for Big Sioux Community Rural Water System remain in effect for the amounts listed. A roll call vote was taken, and the motion carried unanimously.

CONSIDER RESCISSION OF SUSPENSION OF WATER RIGHT NOS. 4678-3 AND 6960-3, CRAIG JEPSEN, HUTCHINSON, MN: Mr. Duvall reported that at the March 3, 2021, meeting, the board suspended these two permits for failure to submit the irrigation questionnaires.

Mr. Duvall stated that a compliance check was done by staff, and it was discovered that the irrigation systems were operating. Staff then contacted Gary Jepsen, who is Craig Jepsen's nephew, regarding the suspended permits.

Gary Jepsen was administered the oath by the court reporter. Mr. Jepsen stated that he and his uncle have farmed together since the mid-1980's. His uncle recently retired, and he has been diagnosed with Alzheimer's disease. Mr. Jepsen said he was not aware of the irrigation questionnaires had not been submitted because Craig Jepsen has always taken care of submitting them in the past. Mr. Jepsen stated that he would like to be able to irrigate.

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Mr. Duvall stated that when staff contacted Mr. Jepsen, he indicated that he would like to have the suspension rescinded, and he did submit the irrigation questionnaires.

Mr. Freeman suggested that Mr. Jepsen submit questionnaires on time in the future.

Mr. Duvall noted that the Water Rights Program will send the questionnaires to Gary Jepsen in the future.

Motion by Freeman, seconded by Holzbauer, to rescind suspension of Water Right Nos. 4678-3 and 6960-3, Craig Jepsen. A roll call vote was taken, and the motion carried unanimously.

ADJOURN: Chairman Bjork declared the meeting adjourned.

A court reporter was present, and a transcript of the proceedings may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre SD 57501, telephone number (605) 222-4235.

The audio recording for this meeting is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=106>.

Approved on the 6th day of October 2021.



Water Management Board

WATER MANAGEMENT BOARD MEETING

July 7, 2021

Qualifications: wi - well interference wcr - well construction rules iq - irrigation questionnaire lf - low flow

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
2005-1	Cedar Berry Canyon LLC	Sioux Falls	LA	0.20 cfs	wds	1 well-Madison	wi, wcr, 3 special
2006-1	Thomas Simons	Howes	MD	5.34 cfs	900 acres	Cheyenne River	lf, iq
2815-2	Jerry & Kari-Ann Casper	Rapid City	PE	0.009 cfs	commercial	1 well-Crystalline Rock	wi, 2 special
2816-2	Sudbury Ranch LLC	Rapid City	PE	0.11 cfs	wds	1 well-Madison	wi, wcr, 3 special
5887A-3	Kock Fertilizer LLC	Wichita KS	BD	no add'l	commercial & industrial	1 well-Dakota Aquifer	wi, wcr, 3 special
8455-3	Rob & Jodi Waltman	Wetonka	MP	1.10 cfs	60 acres	1 well-Inyan Kara	wi, wcr, iq, 1 special
8482-3	Reid Bird	Elk Point	UN	1.56 cfs	116 acres	1 well-L Vermillion Missouri	wi, wcr, iq
8487-3	Spink Hutterian Brethren	Frankfort	SP	0.144 cfs	domestic & commercial	2 wells-Dakota Aquifer	wi, wcr, 5 special
8488-3	Brett Petersen	Hurley	TU	1.78 cfs	80 acres	1 well-Upper Vermillion Missouri: West	wi, wcr, iq, 1 special
8494-3	Beadle Conservation Dist.	Huron	BD	0.022 cfs	4.5 acres	1 well-Warren: West James	wi, iq
8495-3	Justin VandeWeerd	Bruce	BG	no add'l	119 acres	1 well-Big Sioux: North Deer Cr	wi, iq
8496-3	John Bovill	Beresford	LN	1.00 cfs	80 acres	1 well-Brule Creek	wi, iq
8497-3	City of Sioux Falls	Sioux Falls	MA	no add'l	municipal	1 well-Big Sioux: Sioux Falls	wi, wcr, iq, 1 special
8498-3	Terry Wieting	Huron	BD	0.41 cfs	30 acres	James River	iq, 2 special
8499-3	NorSwiss Dairy	Twin Brooks	GT	2.22 cfs	160 acres	1 well-Prairie Coteau	wi, wcr, iq
8500-3	Joseph Plucker	Parker	TU	no add'l	105 acres	1 well-Parker Centerville	wi, iq
8501-3	John & Jacki Smith	Yankton	YA	1.33 cfs	80 acres	1 well-Lower James Missouri	wi, wcr, iq, 1 special
8503-3	Sorensen Family Farm LLC	Vermillion	CL	2.56 cfs	120 acres	1 well-Missouri: Elk Point	wi, wcr, iq, 1 special
8504-3	Redstone Farms RE LLC	Pipestone MN	CK	0.133 cfs	commercial	1 well-Altamont	wi, 4 special
8505-3	Dakota Range III O&M	Summit	GT	0.044 cfs	commercial	1 well-Prairie Coteau	wi, 2 special
8506-3	Prairie View Golf LLC	Gary	DU	0.064 cfs	4.3 acres	1 well-Prairie Coteau	wi, iq, 2 special
8507-3	Craig Vanderlei	Springfield	BH	1.78 cfs	140 acres	1 well-Niobrara	wi, wcr, iq
8508-3	Mark or Lee Guthmiller	Menno	HT	no add'l	90 acres	1 well-Lower: James Missouri	wi, iq
8509-3	Riverview Farm LLC	Canton	LN	0.55 cfs	40 acres	1 well-Big Sioux: South	wi, wcr, iq

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
5689-3	Big Sioux Community Rural Water System	Egan	LK	360 AF	RWS	Big Sioux:Northern Skunk Creek	none
6834-3	Big Sioux Community Rural Water System	Egan	LK	600 AF	RWS	Big Sioux:Northern Skunk Creek	none